



State of Delaware
Clean Water Advisory Council
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Minutes of the 94th Meeting

December 2, 2009

The Delaware Clean Water Advisory Council met Wednesday, December 2, 2009 at 9:00 a.m., at the Kent County Administrative Complex, 555 S. Bay Road, Conference Room 220, Dover, Delaware.

MEMBERS PRESENT:

Joe Corrado, Chair
Kevin Anderson
Lee Beetschen
Gary Burcham
Andy Burger
Joseph Charma
Eugene Dvornick
Andy Manus
Hans Medlarz
Mike Karia

OTHERS PRESENT WERE:

Terry Deputy, DWR/Financial Assistance Branch
Daisy Lopez, DWR/Financial Assistance Branch
Davison Mwale, DWR/Financial Assistance Branch
Frank Paquette, DWR/Financial Assistance Branch
Reza Moqtaderi, DWR/Financial Assistance Branch
Greg Pope, DWR/Financial Assistance Branch
Frank Piorko, Division of Soil and Water Conservation
Kathy Bunting-Howarth, DNREC
Joe Farrell, University of Delaware
Maddy Russell, University of Delaware
Christopher Fazio, Remington, Vernick & Beach Engineers
Ed Lewandowski, CIB
Daniel Baber, Sussex County
Susan Webb, Sussex County
David Athey, URS
Ken Branner, Artesian Water
Robert Baldwin, DNREC
Jennifer Adkins, Partnership for the Delaware Estuary
Roy Simonson, City of Newark
Mike Svaby, NCC Special Services
Jim Sullivan, DNREC
John Ashman, Sussex County
Dennis J. Hassan, WRSA
Ryan Flickinger, KCI

Brian Kelly, DNREC
Lorraine Zellers, City of Rehoboth
Bill Sargent, City of Rehoboth
Honorable Sam Cooper, City of Rehoboth
Greg Feresse, City of Rehoboth
Ryan Mavity, Cape Gazette
Pam Sapko, DGH
Bruce Patrick, Tidewater Utilities
Kevin Donnelly, NCCD
Stan Mills, City of Rehoboth
D.C. Kuhns, Blue Water Development

CALL TO ORDER

Meeting came to order at 9:10 am.

APPROVAL OF THE AGENDA

Motion made by Mr. Dvornick seconded by Mr. Manus to approve the agenda. Agenda approved unanimously.

APPROVAL OF MINUTES – Council Meeting held on September 16, 2009

Motion made by Mr. Burger seconded by Mr. Karia to approve the minutes. Motion passed unanimously.

REPORTS

Administrators' Reports

CWAC Updates

- There were 10 proposals received for the Statewide Wastewater Assessment; the Evaluation Team will meet on Thursday, December 10th in the Financial Assistance Branch office to open and review the proposals. The goal is to select and award a contract by December 18th.
- A Community Water Quality Improvement Grants workshop will be held on Thursday, December 3rd from 9:00 am to 12:00 pm at the Delaware Technical and Community College, Terry Campus, Dover.
- An Engineer IV position for the Clean Water State Revolving Fund program has been posted; only current State Merit employees are eligible to apply. The posting closes on December 3rd.

A. Wastewater

i. Project Updates

In the Johnson's Corner Sanitary Sewer District, all contracts were executed on 5/12/09 and 9/22/09 and the project has fully complied with the ARRA requirements for being under contract or in construction; Angola Neck Sanitary Sewer District executed contract 09-08 on 10/27/09 in excess of \$1.5 million ARRA loan. The project has fully complied with the ARRA requirements for being under contract or in construction.

Oak Orchard Sanitary Sewer District Expansion contract 09-10 has been awarded in excess of \$5.6 million ARRA loan – once executed, the project will be in compliance with the ARRA requirements of being under contract or in construction; Woodlands of Millsboro Sanitary Sewer District contract 09-14 has been advertised with a bid opening date of 12/17/09; and the Inland Bays Regional Wastewater Facility Expansion contract 09-19 has been advertised with a bid opening date of 12/11/09.

ii. ARRA and Base CWSRF Municipal Loan Applications Status

A chart listing all the ARRA and Base CWSRF projects was presented to the Council. The chart indicates that the ARRA Municipal loans projects have completed a financial and environmental review; binding commitment letters have been completed or have been sent; and anticipated loan closing dates and construction start dates have been selected.

The Green Project Reserve projects have had all financial and environmental reviews completed; the binding commitment letters have been completed for all projects; dates for loan closing and construction start dates have been selected except for the Johnson's Corner SSD; construction start date for that project is in process.

iii. Proposed ARRA Project Funding Fail-Safe Plan

All ARRA projects must be under contract and loans closed before February 17, 2010. To allow the loan applicants the maximum possible time and FAB time to implement a contingency plan, all ARRA projects must be under contract and loans closed by February 8th. If these projects have not closed by February 8th, the CWSRF ARRA Binding Commitment letters will be withdrawn and no funding will be provided.

Withdrawn ARRA funds exceeding \$1.0 million will be offered to the Kent County Renewable Energy Park which has received construction bids and have been approved by EPA for funding. Withdrawn ARRA funds less than \$1.0 million will be offered to the Homestead Mobile Park's decentralized wastewater system, which is under-funded by \$150,000.

Motion made by Mr. Manus, seconded by Mr. Burger to approve the proposed Fail-Safe Plan. The floor was opened for questions and discussion.

It was asked what portion of the ARRA funding constitutes principal forgiveness. It was stated that all ARRA funding has principal forgiveness associated with the projects. If a green project doesn't move forward the binding commitment letter will be pulled and they will not be eligible for any ARRA funding. At some point, the council may want to entertain a base SRF loan but it will not have any principal forgiveness.

It was asked what would happen if the Homestead Mobile Park doesn't meet their deadline. It was stated that it will go to another project but there is assurance that the Mobile Home Park project will move forward.

Motion passed with majority vote. Mr. Medlarz abstained from voting.

B. Financial Reports

Projected CWSRF Projects On or Before March 31, 2010

It is projected that \$84.6 million will be used for CWSRF projects funded by March 31, 2010; \$46.68 million for existing CWSRF funding. Two projects associated with the City of Newark will receive funding. One project will receive \$1.4 million and the other project will receive \$3.5 million. The Town of Blades will not move forward so \$137,500 is available to fund another project. There are \$22.6 million for possible USDA co-funding; \$18.4 million for the ARRA projects that must be under contract or in construction by February 17, 2010; and \$1.87 million for STAG Grant and Developer Contribution. All municipal loan applications have been received.

i. Non Federal Administrative Account Discussion/Revision

The presentation received at the last Council meeting on the Non Federal Administrative Account had a significant error that has been corrected. The Council was presented with three charts that included the correction. The first chart shows that the current balance in the account is \$9.1 million as of the end of FY 2009. The chart included the actual amount for FY 2009 and projected amounts for FY 2010 through FY 2015 for Investment Interest, Administrative Fees for

projects, Planning and Design RLF (Repay); Current uses of funds for FAB Administrative Expenses, Non Federal Admin. Fund Growth, and New Uses of Funds. It is projected that by FY 2010 there will be \$9.8 million in Cumulative Funds but in subsequent years it is projected that on an annual basis there will be more money being used vs. money revolving back into the account.

The second chart shows the same information but includes the amounts for the Proposed Uses of Funds and states that in FY 2010 the Cumulative balance will be \$8.5 million. The proposed uses have been approved by the Department and will be moving forward with implementing the proposed uses. If the current level of funding is maintained at this rate, this account will have a negative balance by FY 2010.

It was asked if it were correct that at the Budget Hearing for the Department the funding for the proposed uses would continue beyond the current year. It was stated that it is possible that the spending for the proposed uses would continue for two years.

The third chart shows the same information but without the State Match. The cumulative balance for FY 2010 is \$8.5 million and doesn't run negative. There is a significant tradeoff between uses and the State Match.

Chairman Corrado stated that several years ago he proposed that a statewide user fee be implemented so that the Council will have the funds for grants and for programs that the Council has funded since its inception. He asked that Terry Deputy work with the Finance Subcommittee to look for ways to generate revenues for the future.

It was asked how much users pay in fees statewide. It was stated that it depends on the type of fee. The Administrative fee is 1% and an option would be to increase that fee to 1.5%. Another option is to assess what the current fees are within the environmental wastewater agreement and find out what the surrounding states are doing.

It was stated that at the Surface Water Subcommittee this topic was discussed and by recollection the committee agreed that the Council would commit to funding salaries until 2010. The Council does not feel that they can afford to continue to spend money that they don't have.

It was stated that the Department budget that was submitted to the Budget Office included the salary dollars from the Non-Federal Administrative Account for FY 2011 and that within the next couple of months a committee will be assigned to review the FY 2011 issues and come back with a recommendation.

It was asked if there was any discussion with the Council on the FY 2011 budget. It was stated that at the December 2008 meeting the Council discussed using the salary dollars from GF to ASF but the Council has not made any recommendations to the Department on the FY 2011 Budget.

Chairman Corrado expressed his concern and frustration that budget decisions are being made without discussion with the Council. He stated that the CWAC has done a superb job in funding projects since its inception and are being asked to shoulder additional expenses without the proper revenues and if they are going to continue to service the State and its wastewater projects they need to have the funds to do so. He asked that Terry work with Andy and the Finance Subcommittee and look at ways where they can be an independent body and make recommendations to the Department and the General Assembly so that they can continue to sustain their mission to the State.

Mr. Burcham stated that at the Surface Water Subcommittee meeting, he suggested that fees charged by the Department be reviewed. Fees have not been raised since 1991 and need to be reviewed and a recommendation needs to be given to the General Assembly for consideration of a fee increase adjustment.

ii. Cash Flow Model

The following summarized Financial Report was presented to the Council for the month ending October 2009. The Financial Assistance Branch office had an independent auditor come in review the Cash Flow Model and gave a verbal approval. They also had a mid-year ARRA Review and there were no findings and no issues. It was stated that there is sufficient money to fund projects.

The difference between the obligated funds and disbursed funds from a cash flow perspective is the average municipal wastewater projects take, which could be at least 2 to 3 years, to complete construction. Obligated funds reflects the money committed to wastewater projects while disbursed funds represent actual money that has been spent for projects.

Delaware WPCRF Financial Report					
Month Ending October, 2009					

It was asked what would be the worst case scenario with this cash flow model. It was stated that the worst case scenario would be if the projected demand doesn't happen. The model has a \$2 to \$4 million cushion built into it in case there is a need for supplemental financing or in case there is a down turn. It is projected that in the next year this account will receive, at a minimum, \$3.5 million from the Federal Government.

iii. 21st Century Fund Account

21st Century Fund report was presented for the month ending October 2009. In the Infrastructure Planning Account there is \$0; in the Wastewater Management Account there are \$3.45 million. There is \$541,902 in project grant that was returned from completed projects. In the Clean Water State Match there is \$0. There is a total of \$2.0 million available in the 21st Century Fund.

C. Surface Water

It was suggested that the Delaware DPPI Dialogue that was completed several years ago be re-circulated to new members of the Council. Chairman Corrado agreed with the suggestion. The dialogue has many good recommendations for Stormwater issues.

The City of Newark held a city public workshop for the Stormwater Utility on November 16 presented by the University of Delaware. It was well received and attended by the City Council Chambers.

New Castle County held a meeting with the Department and AMEC on October 29 and a larger meeting is scheduled for December 14.

Kent County Level of Service Project – there is continuation of meetings with Kent County, the City of Dover, URS, Kent Conservation District, and the Department to discuss financing and to explore options related to a possible stormwater district.

Appoquinimink Watershed Plan – there was a meeting held with the New Castle County Southern Land Use Planning group which included County Executives and DelDOT Secretary and their planning staff and discussed how this type of plan may be integrated with what is being done in the school district planning level and DelDOT planning level and will move forward to adopt management strategies in early 2010. Staff has been busy performing ARRA GPR technical and Administrative Reviews for 10 projects.

Other updates include continuation on Green Project Reserve projects through the Clean Water State Revolving fund for Community Clean Water Grants and Stormwater Planning Grants; developing funding for Stormwater loans through the Non-Point Source set-aside or Septic set-aside; working with Terry on the small stormwater project needs in addition to developing criteria for stormwater projects; and continuing efforts to develop funding options for watershed planning and water management.

SUBCOMMITTEES' REPORTS

A. Wastewater

The Wastewater Subcommittee has been meeting to discuss the Beneficial Reuse. The Committee has expanded to 15 members. The committee is working on developing a Beneficial Reuse plan that can be used by the Council to do Public Outreach. The first Public Outreach workshop was held on November 18 and was very well attended. The Committee is now working on having a conference. A report will be given to the Council by the next meeting.

B. Surface Water Management

Nothing to report – no meeting was held.

C. Public Outreach

Mr. Piorko was thanked by Mr. Manus for working with the Public Outreach Committee and providing help from Michelle Jacobs to get the newsletter out. The Newsletter is available for distribution. In the Newsletter there will be highlights on two new Council Members, Kevin Anderson and Eugene Dvornick; articles on Wastewater projects – Angola Neck Sanitary Sewer District and Johnsons Corner Sanitary Sewer District. Also have two articles on Stormwater Infrastructure loan eligibility projects.

The Public Outreach Subcommittee received from DNREC the responses to questions on Spray Irrigation. There were 16 questions that were asked and have the responses. The list of questions and responses will be distributed to the Council Members.

D. Forestland Conservation

The Forestland Conservation Workgroup Subcommittee is putting together a draft report and will like to meet with the CWAC Subcommittees to get feedback on the findings. A report will be given at the next Council meeting.

E. Finance

The information provided under the Financial Reports was also discussed at the Finance Subcommittee meeting. The one topic that has not been discussed is the idea to set up criteria on how this Council is going to fund Stormwater projects. Most of the money that was to be used for Surface Water projects was taken back due to budget constraints. The Council needs to address funding for Surface Water projects.

Chairman Corrado suggested that when the Finance Subcommittee meets with Mr. Deputy they should include Stormwater funding on the agenda and bring back a report to the Council.

OLD BUSINESS

None

NEW BUSINESS

FY 2010 Federal CWSRF Appropriation and Capitalization Grant

Delaware received a FY 2010 Federal Capitalization Grant for \$10 million. It will require \$2.0 million State Match for the Non-Federal Administrative Account. At least 30% must be used to make CWSRF loans affordable and at least 20% must be used for Green Projects.

The 2010 Notice-of-Intent (NOI) Workshops will be held in each County. The first workshop will be held in New Castle County on December 14 at 9 am at the Delaware Technical and Community College, Stanton Campus. Two workshops will be held on December 16, in Kent County at 9 am at the Delaware Technical and Community College, Terry Campus and in Sussex County at 1:30 pm at the Delaware Technical and Community College, Owens Campus. NOIs will be solicited on January 2nd for Municipal Wastewater and Green Project Reserve projects and will be due to the Financial Assistance Branch office by January 29.

Sussex County/City of Rehoboth Wastewater Project Workshop

Chairman Corrado stated that for the Council's benefit he sent a letter to the City of Rehoboth Beach and Sussex County suggesting that since the Council is going to fund part of their project and since the Council has not been privy to all the information discussed, that a workshop be held so that they can have the opportunity to ask questions and understand this project completely regarding the financial ramifications.

It was stated that the Board of Commissioners is meeting on December 2nd to discuss the options for this project. The official vote will be on December 12th. It was stated that it would be a good idea to get details of what the City and County have discussed and the outcome of their discussions; what other sources of funds are available; what the future cost will be, etc. It was recommended that the workshop be conducted through the Wastewater Subcommittee because of their involvement with Beneficial Reuse.

The reason that the Chairman is suggesting a workshop is because this is a huge project that requires a substantial amount of funding, regardless of what option is chosen, and the Council should be aware of all the ramifications and what the funding requirements are going to be.

Mayor Cooper expressed his concern and asked if this was the usual procedure in the way the Council usually entertains project funding requests. He stated that the City of Rehoboth and Sussex County has gone through a long process and this project has been presented and discussed numerous times and wants to make sure that this project is listed on the next Notice-of-Intent for the Project Priority List which is due by the end of January 2010. He stated that he feels the Council is asking them to move backwards vs. moving forward. It was stated that it would make sense to have a workshop after an option is approved by the Board of Commissioners.

The Council agreed that they will have an educational session after a decision has been reached on this project.

Use of Non-Federal Administrative Funds for Small Research Grants and CWAC Workshops, Meetings, and Expenses

The Council had a discussion on setting up a budget to fund agencies or organizations that will assist the Council on small research for projects. With the Council exploring Beneficial Reuse of treated wastewater, they are going to need funding for organizations such as the Delaware Geological agency so that they can assist in researching what beneficial reuse options are available in Delaware as well as expenses that will be needed in the future for public outreach to get the word out on Beneficial Reuse.

They also discussed setting up a fund for CWAC workshops, meetings, and conferences. It was stated that the CWAC Subcommittees are generating considerable discussions with respect to various issues and the Council would like to have the funding to hold events to put forward concepts and ideas and also receive input from those events. It was recommended that the Council set up a schedule of activities for the Fiscal Year.

Motion made by Mr. Karia, seconded by Mr. Charma to set up a Research Grant program. Motion passed unanimously.

Motion made by Mr. Dvornick and seconded by Mr. Karia to develop a budget that Mr. Deputy and Chairman Corrado can approve a budget for the events and expenses and do a roll call for those expenses.

Identifying Potential Sites in Delaware for Slow Rate Land Application of Wastewater - William Ritter Proposal

It is being explored if the proposal requested by the Council in identifying potential sites in Delaware for Slow Rate Land Application of Wastewater completed by Dr. Ritter has to be done through an RFP. There are existing policies that may affect the areas listed in the proposal. If the Council decides they want to move forward with this proposal the Department will ensure that the proper procedures are in place. There are existing policy issues that may need to be changed or new policies established in respect to this proposal. The Council would like the study to be completed by the University of Delaware. It was asked if this project would qualify for a small research grant. It was stated that it would.

It was suggested that a criteria in Task #1 is needed to include existing policies and plans on state lands when evaluating potential sites for disposals. It was stated that as a path forward a report needs to be specific with respect that there are other policies and management plans that may retreat the use of some of the plans listed in the proposal. It was also stated that communication and coordination with Dr. Ritter and everyone involved in the RFP will need to be established.

A motion was made to accept the proposal as a research grant and move forward subject to funding availability and according to the bidding process. It was stated that the GIS mapping needs to be consistent with the State Planning office's GIS mapping coordinates. It was also stated that the criteria for distance needs to be included in the research protocol.

With many suggestions and recommendations being made by the Council Members, Chairman Corrado suggested that this item be tabled and any Council Member that has a recommendation submit them and put this item on the agenda for the next Council meeting. The recommendations will be gathered and given to Dr. Ritter to show what the Council would like the study to look like. It was suggested that Dr. Ritter be invited to the next Council meeting.

Motion made by Mr. Burcham, seconded by Mr. Karia to table the previous motion and continue this item on the agenda for the January meeting. Motion passed unanimously.

Kent County Renewable Energy Park Supplemental Funding Request

On April 19th, the Clean Water Advisory Council approved a CWSRF loan in the amount of \$9.27 million for Kent County Renewable Energy Park. Kent County is requesting a supplemental funding request in the amount of \$2.29 million which will revise the total loan request to \$11.56 million. The funding request is a result of the project scope modifications made between funding application date and final design, the most notable items are the Passive Solar Chamber Floor Heating Systems and the Motor Control Center Replacement with back-up generation; the Photovoltaic Solar expanded site preparation and high voltage switch gear replacement.

The request is also for the UV Disinfection project and they are requesting a supplemental in the amount of \$826,986. The funding request is the result of regulatory as well as algae control requirements to protect the UV system.

Based on the financial and environmental reviews for the proposed project, the Financial Assistance Branch recommends that the Council approve the supplemental funding request for this project.

Motion made by Mr. Manus, seconded by Mr. Burger to approve this funding request. Motion passed. Mr. Medlarz abstained from voting due to his involvement with the project.

Future CWAC Meeting Dates

The 2010 Council meetings are scheduled for January 27, February 17, March 17, April 21, May 19, June 16, July 21, August 18, September 15, October 20, November 17 and December 15. All meetings are from 9 am – 12 pm.

PUBLIC COMMENT

None

GOOD OF THE COUNCIL

Chairman Corrado wished everyone a Happy Holiday.

ADJOURNMENT

Next meeting will be held on January 27, 2010 at the Kent County Administrative Complex, 555 S. Bay Road, Dover in Conference Room 220 beginning at 9:00 am.

Motion made to adjourn the meeting. Meeting adjourned at 11:22 am.